

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

Publix Super Markets, Inc  
3300 Publix Corporation Pkwy  
Lakeland, FL 33811-3311

**ATTENTION:**

Kevin Murphy  
Senior Vice President of Retail Operations

**Request to Provide Information Pursuant to the Clean Air Act**

The U.S. Environmental Protection Agency is requiring Publix Super Markets, Inc (Publix or you) to submit certain information pursuant to Section 114(a) the Clean Air Act (Act), 42 U.S.C. § 7414(a). Appendix A provides the instructions needed to answer this information request, including instructions for electronic submissions. Appendix B specifies the information that you must submit. You must send this information to us within 60 calendar days after you receive this request.

We are issuing this information request under Section 114(a) of the Clean Air Act (the CAA), 42 U.S.C. § 7414(a). Section 114(a) authorizes the Administrator of EPA to require the submission of information. The Administrator has delegated this authority to the Director of the Air and Radiation Division, Region 5.

As a person maintaining, servicing, repairing, or disposing of appliances containing class I or class II substances used as refrigerant, Publix is subject to the requirements of Section 114(a) of the Act. Publix is subject to the requirements of 40 C.F.R. Part 82, Subpart F. The information sought by this request is necessary for U.S. EPA to determine whether Publix is in compliance with 40 C.F.R. Part 82, Subpart F.

Publix must send all required information to:

Attn: Compliance Tracker, AE-18J  
Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

And

Air Enforcement and Toxics Branch  
U.S. Environmental Protection Agency  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
Attn: Shilpa Patel

Publix must submit all required information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act and 18 U.S.C. §§ 1001 and 1341.

As explained more fully in Appendix C, you may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice. You should be aware, moreover, that pursuant to Section 114(c) of the CAA and 40 C.F.R. § 2.301(a) and (f), emissions data, standards and limitations are not entitled to confidential treatment and shall be made available to

the public notwithstanding any assertion of a business confidentiality claim. Appendix C provides additional information regarding the meaning and scope of the term “emissions data.”

This information request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information from specific individuals or entities as part of an administrative action or investigation.

We may use any information submitted in response to this request in an administrative, civil or criminal action.

Failure to comply fully with this information request may subject Publix to an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413.

You should direct any questions about this information request to Shilpa Patel at (404) 562-9044 or [patel.shilpa@epa.gov](mailto:patel.shilpa@epa.gov).

Date

7/17/18

Edward Nam

Director

Air and Radiation Division

## **Appendix A**

When providing the information requested in Appendix B, use the following instructions and definitions.

### **Instructions**

1. Provide a separate narrative response to each question and subpart of a question set forth in Appendix B.
2. Precede each answer with the number of the question to which it corresponds and, at the end of each answer, identify the person(s) who provided information used or considered in responding to that question, as well as each person consulted in the preparation of that response.
3. Indicate on each document produced, or in some other reasonable manner, the number of the question to which it corresponds.
4. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
5. Where information or documents necessary for a response are neither in your possession nor available to you, indicate in your response why the information or documents are not available or in your possession, and identify any source that either possesses or is likely to possess the documents or information.
6. If information not known or not available to you as of the date of submission later becomes known or available to you, you must supplement your response. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or incorrect, you must notify EPA as soon as possible.

### **Electronic Submissions**

To aid in our electronic recordkeeping efforts, we request that you provide all documents responsive to this information request in an electronic format according to paragraphs 1 through 6, below. These submissions are in lieu of hard copy.

1. Provide all responsive documents in Portable Document Format (PDF) or similar format, unless otherwise requested in specific questions. If the PDFs are scanned images, perform at least Optical Character Recognition (OCR) for “image over text” to allow the document to be searchable. Submitters providing secured PDFs should also provide unsecured versions for EPA use in repurposing text.
2. When specific questions request data in electronic spreadsheet form, provide the data and corresponding information in editable Excel or Lotus format, and not in image format. If Excel or Lotus formats are not available, then the format should allow for data to be used in calculations by a standard spreadsheet program such as Excel or Lotus.

3. Provide submission on physical media such as compact disk, flash drive or other similar item.
4. Provide a table of contents for each compact disk or flash drive containing electronic documents submitted in response to our request so that each document can be accurately identified in relation to your response to a specific question. *We recommend the use of electronic file folders organized by question number.* In addition, each compact disk or flash drive should be labeled appropriately (e.g., Company Name, Disk 1 of 4 for Information Request Response, Date of Response).
5. Documents claimed as confidential business information (CBI) must be submitted on separate disks/drives apart from the non-confidential information. This will facilitate appropriate records management and appropriate handling and protection of the CBI. Please follow the instructions in Appendix C for designating information as CBI.
6. Certify that the attached files have been scanned for viruses and indicate what program was used.

### **Definitions**

All terms used in this information request have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the Chlorofluorocarbon Recycling and Emissions Reduction Standards, 40 C.F.R. Part 82, Subpart F. The following definitions shall apply:

*Comfort cooling* means the air-conditioning appliances used to provide cooling in order to control heat and/or humidity in occupied facilities including but not limited to residential, office, and commercial buildings. Comfort cooling appliances include but are not limited to chillers, commercial split systems, and packaged roof-top units.

*Commercial refrigeration* means the refrigeration appliances used in the retail food and cold storage warehouse sectors. Retail food appliances include the refrigeration equipment found in supermarkets, convenience stores, restaurants and other food service establishments. Cold storage includes the refrigeration equipment used to store meat, produce, dairy products, and other perishable goods.

*Full charge* means the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one or a combination of the following four methods: (1) Use of the equipment manufacturer's determination of the full charge; (2) Use of appropriate calculations based on component sizes, density of refrigerant, volume of piping, and other relevant considerations; (3) Use of actual measurements of the amount of refrigerant added to or evacuated from the appliance, including for seasonal variances; and/or (4) Use of an established range based on the best available data regarding the normal operating characteristics and conditions for the appliance, where the midpoint of the range will serve as the full charge.

*Industrial process refrigeration* means complex customized appliances that are directly linked to the processes used in, for example, the chemical, pharmaceutical, petrochemical, and manufacturing industries. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks. Where one appliance is used for both industrial process refrigeration and other applications, it will be considered industrial process refrigeration equipment if 50 percent or more of its operating capacity is used for industrial process refrigeration.

## **Appendix B**

### **Information You Are Required to Submit to EPA**

Publix Super Markets, Inc. (Publix) must submit the following information pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a):

1. Publix must submit a list of all comfort cooling appliances (CCA) normally containing more than 50 pounds of a class I or class II ozone-depleting substance at all supermarkets or manufacturing facilities owned or operated by Publix or any of its subsidiaries.
2. Publix must submit a list of all commercial refrigeration appliance (CRA) normally containing more than 50 pounds of a class I or class II ozone-depleting substance at all supermarkets or manufacturing facilities owned or operated by Publix or any of its subsidiaries.
3. Publix must submit a list of all industrial process refrigeration equipment (IPRE) normally containing more than 50 pounds of a class I or class II ozone-depleting substance at all manufacturing facilities owned or operated by Publix or any of its subsidiaries.
4. For each CCA, CRA, and IPRE, Publix must state the amount of the full charge of refrigerant and the type of refrigerant used.

## **Appendix C**

### **Confidential Business and Personal Privacy Information**

#### **Assertion Requirements**

You may assert a business confidentiality claim covering any parts of the information requested in the attached Appendix B, as provided in 40 C.F.R. § 2.203(b).

Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2.

“Emission data” means, with reference to any source of emissions of any substance into the air:

Information necessary to determine the identity, amount, frequency, concentration or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

Information necessary to determine the identity, amount, frequency, concentration or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including to the extent necessary for such purposes, a description of the manner and rate of operation of the source); and

A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.301(a)(2)(i)(A), (B) and (C).

To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document for which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a caption or other suitable form of notice to indicate the intent to claim confidentiality. The stamped or typed caption or other suitable form of notice should employ language such as “trade secret” or “proprietary” or “company confidential” and indicate a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by EPA only to the extent permitted and by means of the procedures set forth at Section 114(c) of the CAA and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the information request as a waiver of that claim, and the information may be made available to the public without further notice to you.



## **Determining Whether the Information Is Entitled to Confidential Treatment**

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208, which provides in part that you must satisfactorily show: that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, that the information is not and has not been reasonably obtainable by legitimate means without your consent and that disclosure of the information is likely to cause substantial harm to your business's competitive position.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking that you support your confidential business information (CBI) claim. If you receive such a letter, you must respond within the number of days specified by EPA. Failure to submit your comments within that time would be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. If you receive such a letter, EPA will ask you to specify which portions of the information you consider confidential by page, paragraph and sentence. Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being CBI, EPA will ask that you answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a special event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

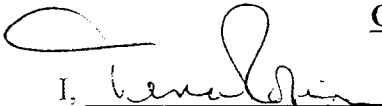
7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
8. Is there any other information you deem relevant to EPA's determination regarding your claim of business confidentiality?

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), you must bracket all text so claimed and mark it "CBI." Information so designated will be disclosed by EPA only to the extent allowed by and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

### **Personal Privacy Information**

Please segregate any personnel, medical and similar files from your responses and include that information on a separate sheet(s) marked as "Personal Privacy Information." Disclosure of such information to the general public may constitute an invasion of privacy.

CERTIFICATE OF MAILING

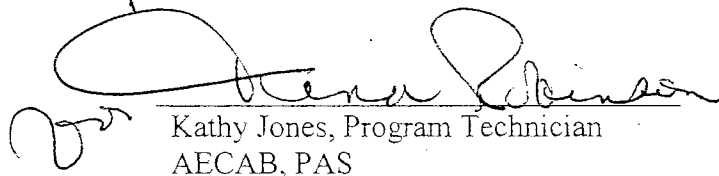
I,  certify that I sent a Request to Provide Information Pursuant to the Clean Air Act by Certified Mail, Return Receipt Requested, to:

Kevin Murphy  
Senior Vice President of Retail Operations  
Publix Super Markets, Inc  
3300 Publix Corporation Pkwy  
Lakeland, FL 33811-3311

I also certify that I sent a copy of the Request to Provide Information Pursuant to the Clean Air Act by E-mail to:

Jeffrey F. Koerner  
FDEP Director of the Division of Air Resource  
Management  
[Jeff.Koerner@dep.state.fl.us](mailto:Jeff.Koerner@dep.state.fl.us)

on the 28<sup>th</sup> day of September 2018

  
Kathy Jones, Program Technician  
AECAB, PAS

Certified Mail Receipt Number: 7017 0530 0000 62887538

## SCANNING COVER SHEET

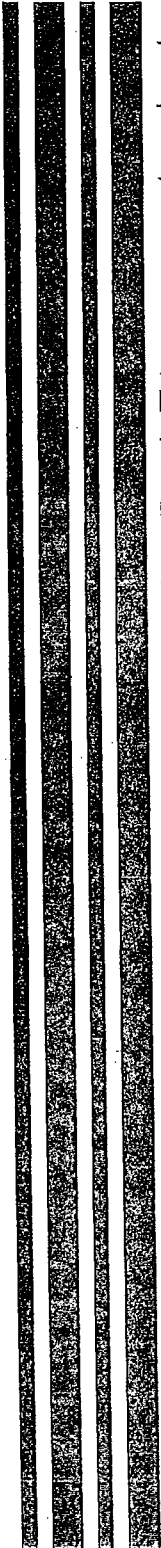
Batch Class: Enforcement

*Please check the types of documents included in this Batch.*

- ☐ **APO Waiver Request** (Submit immediately for scanning into EDMS and send to Ed Nam electronically)
- ☐ **Alternative Monitoring Response**
- ☐ **Applicability Determination/Landfill Determinations**
- ☐ **Confidential Business Information**
- ☐ **Referral to DOJ**
- ☐ **Inspection Notices/Inspection Reports**
- ☐ **Title V Certifications (Michigan Only)**
- ☐ **Color Copies**
- ☐ **CFC Warning Letters/Pollution Control Certification**
- ☐ **Administrative Consent Order (ACO)**
- ☐ **Consent Agreement & Final Order (CAFO)**
- ☐ **Administrative Order (AO)**
- ☐ **Information Request (114 & 208)**
- ☐ **Notice of Violation/Finding of Violation (NOV/FOV)**

**Note any other items in batch that should be brought to the attention of the Scanning Operator.**

	Name	Date
Mail Sorted and Assembled into Batch:	K. Jones	9/28/10
Scanned:		
Input into ETS and Distributed:		



This is a Patch T type separator sheet.



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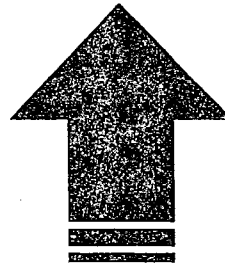
CODE128

This is a Patch T type separator sheet.



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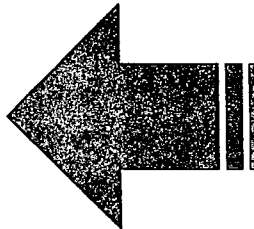
CODE128



Portrait Feed

***New Form Follows...***

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Landscape Feed

***New Form Follows...***

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 26 2018

**MEMORANDUM**

REPLY TO THE ATTENTION OF:

**SUBJECT:** Recommendation to Approve a Consent Agreement and Final Order with  
Quemetco Inc., Indianapolis, Indiana

**FROM:** Sara Breneman *SB*  
Chief  
Air Enforcement and Compliance Assurance Branch

**TO:** Edward Nam  
Director  
Air and Radiation Division

I recommend that you approve the attached Consent Agreement and Final Order (CAFO) for Quemetco Inc., Indianapolis, Indiana, to resolve violations of the Indiana State Implementation Plan, National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting, and its Title V Permits.

Specifically, Quemetco, Inc. failed to install total enclosure differential pressure monitors in the correct locations; maintain the minimum exhaust furnace stream temperature; maintain electronic records of the continuous pressure for the total enclosure and exhaust furnace stream temperature in a form suitable and readily available for expeditious inspection and review; conduct required total hydrocarbon performance testing and correctly conduct lead performance testing on several emission units; submit a Notification of Compliance Status; and accurately report volatile organic compounds emissions in its emissions reports.

This CAFO requires Quemetco Inc. to pay a penalty of \$89,911 and complete a supplemental environmental project which consists of spending at least \$100,000 on the installation of a lead ambient air monitor at the property line. Quemetco will be required to investigate any single reading of lead concentration measured by the ambient air monitor that exceeds 0.12  $\mu\text{g}/\text{m}^3$ . The CAFO resolves the Notice and Finding of Violation issued to Quemetco Inc. on September 30, 2016.

I recommend that you approve the attached Consent Agreement and Final Order.

Attachment

State Representative Contacted: Phil Perry

Date: 9/25/18

By: Nathan Frank